

## **TITLE 327 WATER POLLUTION CONTROL BOARD**

### **#01-95(WPCB)**

#### **SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD**

The Indiana Department of Environmental Management (IDEM) requested public comment from September 1, 2001, through October 3, 2001, on IDEM's draft rule language. IDEM received comments from the following parties:

American Electric Power (AEP)  
Andrews Environmental Engineering Inc. (AEE)  
Bethlehem Steel Corporation (BSC)  
Indiana Builders Association (IBA)  
Indiana Chapter of the National Solid Waste Management Association (NSWMA)  
Indiana Constructors, Inc. (ICI)  
Indiana Manufacturers Association (IMA)  
Kimball International (KI)  
Monroe County Soil and Water Conservation District (MCSW)  
Republic Services, Inc. (RSI)  
Utilimaster (UTI)  
Waste Management of Indiana (WM)

Following is a summary of the comments received and IDEM's responses thereto. The summarized comments are being divided into categories so as to focus on issues.

#### **Rules 1 - 4 Comments**

##### **General Comments:**

*Comment:* They agree with the proposed changes to 327 IAC 15-2-6 which would eliminate the necessity of getting individual permits for discharges to outstanding state resource waters or exceptional use state waters. They suggest making general permits applicable for discharges to outstanding national resource waters as well. (ICI)

*Response:* There are no outstanding national resource waters currently in Indiana. However, this rule language was added for the future in case outstanding national resource waters are designated in Indiana.

*Comment:* The new language in 327 IAC 15-3-2 "except for permittees covered under 327 IAC 15-5 and 327 IAC 15-13" seems to be confusing and duplicative, therefore, should be deleted. (ICI)

*Response:* 327 IAC 15-3-2 contains NOI letter requirements for all Article 15 general

permit rules. Because Rules 5 and 13 have all of the information required for their NOI letter submittals within those respective rules, 327 IAC 15-3-2 does not apply to 327 IAC 15-5 and 327 IAC 15-13. The following language in 327 IAC 15-5-5(a) was deleted “In addition to the Notice of Intent (NOI) letter requirements under 327 IAC 15-3....”

### **Rule 5 Comments:**

#### **Definitions:**

*Comment:* Though “natural and cultural resources” is defined in the rule, the concern is that an operator or a permittee would not know beforehand what these resources were. They wonder if a listing or map of these resources is available, since that would be very beneficial to an investor. (IBA)

*Response:* The intent was for the commissioner or the commissioner’s designated representative to compare the location of the proposed construction site to various resource maps (i.e. Endangered and Threatened Species maps). However, the rule requirement to evaluate natural and cultural resources was deleted.

*Comment:* They question the need to evaluate natural and cultural resources for a storm water permit, and whether these issues are addressed under other statutes and rules. (RSI, NSWMA)

*Response:* According to EPA Region 5, this is not a specific storm water issue but any time EPA issues a permit (a federal action), they are obligated through the National Environmental Policy Act to coordinate with other affected program areas. When EPA delegated the storm water program to the State of Indiana, EPA did not require this review from delegated states at that time. Therefore, the natural and cultural resources review requirement was deleted from rule language.

*Comment:* The definition of “agricultural land disturbing activity” should also include the construction of facilities, such as residences, barns, buildings that house livestock, roads, forest land management activities, agricultural waste lagoons and facilities, lakes and ponds, and other infrastructure. These agricultural activities should be exempt until they reach five acres, and once over five acres, they should be treated as other “land disturbing activities”. (MCSW)

*Response:* Construction activities, regardless of the setting, pose a threat to water quality through the potential pollutants generated during construction operations. Singling out a particular land use for exemption would not be appropriate. Also, the definition change is simply a clarification, and not a change in the coverage of the rule. Construction activities in agricultural areas have been subject to coverage under 327 IAC 15-5 since 1992.

*Comment:* The rule is written to address commercial or residential construction activity, therefore, determining applicability for contract work can be difficult. For example in 327 IAC 15-5-2, it states, “when the activity is under control of the operator”. Again, is a contractor under a public works contract a developer under this definition? The definition of developer should be revised to exclude contractors. (ICI)

*Response:* The words “contractor, developer, and operator” have been defined to clarify their roles as they pertain to their responsibility for maintaining storm water pollution prevention measures at a site.

#### **Rule 5 and Rule 13 interaction:**

*Comment:* MS4 areas in 327 IAC 15-5-4 is not well defined. Questions that need to be answered are whether a highway project would fall under this; where does a listing of MS4 areas exist to meet the requirements of 327 IAC 15-5-5. (ICI)

*Response:* The listing of entities could include any municipality regulated under 327 IAC 15-13, the Phase II Municipal Separate Storm Sewer System (MS4) program, or any entity that the MS4 operator chooses to implement the municipality’s construction storm water permit program. IDEM currently has a list of regulated MS4 entities on their web site.

*Comment:* In 327 IAC 15-5-5(C), it is not clear to a permittee as to whom the construction plans need to be submitted, other than the SWCD. Clarification is also needed as to other entities designated by the department who could potentially need a copy of the construction plan? (IBA)

*Response:* IDEM will provide a revised list of regulated MS4 entities and their agents to whom Rule 5 information needs to be submitted when that information becomes available.

*Comment:* The entity responsible for approving submitted storm water pollution prevention plans is not clearly indicated. According to 327 IAC 15-5-6(b), plan review will be conducted by a minimum of four entities. AEP feels this may not result in a consistent review and conceivably a plan approval being denied. They would like to see the rationale behind having multiple approval entities, as well as, the review guidelines IDEM will be instituting. (AEP)

*Response:* If a project is located within a regulated MS4 area, then the MS4 operator will be responsible for implementing the Rule 5 program. IDEM and IDNR will retain primacy for the responsibility of the Rule 5 program and will provide oversight for the MS4 programs. For projects located outside of a regulated MS4 area, the State will maintain the existing Rule 5 program structure. The intent is not to have all entities issue permits and review permit compliance information. The State does not want to duplicate Rule 5 program efforts and agrees that Rule 5 program implementation should be consistent through out the State of Indiana.

### **Qualified Professional:**

*Comment:* The recommendation is being made to correct the discrepancy which exists between the title of the certifying person in Rule 5 as “qualified professional”, versus “qualified environmental professional” in Rule 6. (KI)

*Response:* The term “qualified environmental professional” in Rule 6 has been changed to “qualified professional.” The term “qualified professional” in Rule 5 has been changed to “trained individual.” The two definitions in these respective rules have been modified to reflect these differences in terms and the differing roles of each of these persons.

*Comment:* The suggestion is being made to eliminate the requirements for a qualified professional as a state certification program is not in place. Another option is to delay the implementation of the requirements until 18 months after the state makes a certification program available. If such a program already exists, companies that did not need certified personnel earlier would need at least a year to get their personnel certified. This also raises the question whether a company can certify their own personnel. (IBA, ICI)

*Response:* The definition of Qualified Professional in Rule 5 has been modified to “Trained Individual” to address concerns voiced in the public comments. This should reduce the perceived burden of needing to hire third parties to conduct quality assurance procedures. IDEM never intended to mandate the hiring of third parties; the intent was to have trained persons conducting the monitoring procedures.

*Comment:* In 327 IAC 15-5-4(24) and 327 IAC 15-5-7(b)(19), the qualifications of the “qualified professional” appear to exceed the requirements of the qualified professionals responsibilities. (RSI, NSWMA)

*Response:* IDEM has reworded this language as to not limit the scope of a “trained individual’s” credentials. IDNR in cooperation with Soil and Water Conservation Districts will provide training courses and materials to assist operators and their representatives in performing these duties for Rule 5.

### **Notice of Intent (NOI):**

*Comment:* One of the requirements for the NOI letter in 327 IAC 15-5-5 is a certification that the storm water quality measures comply with sections 7, 8, 9, and 11. Only sections 7 and 9 pertain to measures that must be used. The reference to section 8 is also inappropriate. (ICI)

*Response:* IDEM has corrected this language.

*Comment:* In 327 IAC 15-5-6, references to “SWD, DNR, DSC” implies there are three (3) agencies, this needs to be clarified. (RSI, NSWMA)

*Response:* IDEM has corrected this language.

### **Land Disturbance Calculation**

*Comment:* If the land disturbance calculation is based on lots, the question is how would the calculation be done for a linear project, such as a sewer line. Per 327 IAC 15-5-7, a stable construction entrance is required at all points of ingress and egress. Such a requirement is not feasible for a linear project. (ICI)

*Response:* The land disturbance calculation for a linear project, such as a sewer line, would be done by taking the total length of the project times the total width of the project. The requirement to provide a stable construction entrance at all points of ingress and egress would have to be assessed on a case by case basis for linear projects via the construction plan review process.

### **Submittal of Construction Plans for Agency Approval:**

*Comment:* In 15-5-6(b)(2), a construction plan is to be submitted sixty (60) days before any land disturbing activities. There is no timeline for the approval process. IBA suggests that if the department has not acted on the construction plan, then after 60 days of submission, land disturbing activities could begin. The issue of an action of recourse for the permittee should be addressed. IBA and NSWMA feel the lack of a deadline appear to violate federal requirements under 40 CFR 122.28(b)(2) (iii). There is a concern that requiring the construction plan to be submitted sixty (60) days prior to land disturbing activities is excessive and would cause unnecessary delays that could contribute to sediment runoff and the company may not be able to take advantage of the construction season. If the same requirement pertains to a public works construction where the contractor is not determined until after a required public bidding process, it must be noted that some elements of the construction plan are determined by the contractor rather than the operator. Holding up plan review would again cause undue delays and be a burden to taxpayers and users of the public facility.(IBA, WM, RSI, NSWMA, ICI, AEP)

*Response:* IDEM has revised 15-5-6(a) language to read, “After the project site owner has received notification from the reviewing agency that the construction plans meet the requirements of the rule or the review period outlined in section 6(b)(3) has expired, all NOI letter information required under section 5 of this rule shall be submitted to the commissioner at least forty-eight(48) hours prior to the initiation of land disturbing activities at the site.”

15-5-6(b)(3) has been revised to, “If the project site owner does not receive notification from the reviewing agency that the plan meets the requirements of the rule within thirty (30) days after the

plan is received by the reviewing agency, the project site owner may submit the NOI letter information.

*Comment:* At 327 IAC 15-5-6, ICI is concerned with requiring approval of the construction plan by the SWCD. The SWCD or any other entity should not have authority to force changes to a plan that effectively controls runoff. This provision is highly subjective. (ICI)

*Response:* While the Storm Water Pollution Prevention Plan is an important document and critical to successful stormwater pollution prevention during the construction process, other issues may arise during construction that would reduce or negate the effectiveness of stormwater pollution prevention measures proposed in the plan. These could include decisions by the operator and/or contractor, which could not have been known by the planner at the time of plan submittal. Weather conditions, likewise, are impossible to predict far in advance, therefore field changes to the plan may often become necessary.

Field changes and additions would be recommended by the reviewing and inspecting agency to address deficiencies and prevent stormwater pollution. These recommended changes would only be made to bring the project in compliance with the standards set forth in this rule and the Indiana Storm Water Quality Manual.

*Comment:* Clarification is needed on 327 IAC 15-5-6 which states that the plan will be approved if the contents meet minimum standards. If the minimum standards are the same as the rule, it needs to be spelled out. If the minimum standards are other than the entire rule, then they need to be referenced. (ICI)

*Response:* IDEM has revised this language to clarify that the plan will be reviewed and verified to see if the contents comply with the rule requirements.

### **Requirements for Construction Plans:**

*Comment:* In 327 IAC 15-5-6.5, the cost for complying with the requirements for construction plans will be less for the an operator of a large subdivision rather than the smaller builder building in rural areas on one (1) to five (5) acre tracts, crippling housing affordability in rural areas. Therefore, IBA suggests a modified construction plan for permits files in the one (1) to five (5) acre range. (IBA, ICI)

*Response:* The purpose of the requirements for construction plans is to ensure that all aspects of a project are evaluated and taken into consideration in the development of the project. The plan is a blueprint for the project and serves to provide critical information to all parties involved in the development and construction of the project. A well developed plan that is drafted utilizing specific site information and that addresses construction activities is the first defense in addressing pollutants associated with the site. The intent of the rule is to reduce the impact of sedimentation and other pollutants associated with construction activity. Taking into

consideration the intent of the rule, the potential for harm is not specific to the size of the development but is related to site specific information such as, but not limited to, topography, soils, proximity to water bodies, and the extent of grading that is planned for the site. A small site of 4 acres may have the potential for more harm if the site is rolling and the developer plans to conduct massive earthmoving compared to a 15 acre site on relatively flat land where the developer has chosen to minimize disturbance of the site.

*Comment:* 327 IAC 15-5-6.5(b)(7) requires that the plan be designed to meet or exceed the requirements of sections 8 or 9 of this rule. Sections 8 and 9 do not seem to have any relevance to the items that are listed. (ICI)

*Response:* IDEM has corrected this language to reference to “...meet or exceed the requirements of sections 7 and 7.5 or this rule...”

*Comment:* In 327 15-5-6.5, requiring the method of seeding to be included in the construction plan seems meaningless. Public works contracts may not specify the method for the contractor to use. (ICI)

*Response:* IDEM has removed the requirement to include the method of seeding.

*Comment:* 327 IAC 15-5-6 requires that the construction plan meet the requirements of section 7. They wonder whether it should be 6.5 instead. (ICI)

*Response:* IDEM has corrected this language.

#### **Post-construction Plan Requirement:**

*Comment:* 327 IAC 15-5-6.5(6) mentions providing information for post construction. The intent of the rule has been to regulate storm water run-off associated with construction activity, not to regulate drainage plans after construction. IBA questions the use of the phrase “10-year storm event”, and well as wonders who would make the judgement of the conditions. (IBA)

*Response:* The post construction requirement requires up front planning for a construction project. The intent is not to regulate the project after it is completed. IDEM intends to duplicate the post construction requirement in 327 IAC 15-13 for Phase II MS4 entities. Examples of these post construction measures will be included in IDEM’s MS4 Guidance Document and in IDNR’s Indiana Stormwater Quality Manual. It is prudent to require consistency across the state to have similar design criteria. The ten (10)-year storm design criteria is most commonly used as a sufficient design criteria for post construction. The agency felt the ten (10)-year criteria would satisfy the intent and not overly burden the operator.

*Comment:* IBA feels that the requirement of a post construction prevention plan is beyond the federal requirements. Also, clarification is needed on the term first flush and the expectations of the department regarding this. (IBA)

*Response:* Each type of land usage has inherent pollutants associated with that type of usage. It is important for the operator to realize that the proposed land use will potentially discharge specific storm water pollutants. Project design can have a significant impact to the amount of these pollutants that enters the run-off stream. This requirement in the rule heightens the awareness of this fact, and requires each project to have designed measures to minimize the impacts of these inherent pollutants.

The term first flush has been removed from the draft rule.

### **General Requirements:**

*Comment:* In 327 IAC 15-5-7.5(b)(5), daily cleanup of the site is a practice that most builders and developers try to achieve, but with the constant flow of contractors at the site, these requirements could lead to enforcement problems. IBA suggests a “weekly cleanup of sediment” be inserted instead. (IBA)

*Response:* Cleanup of the site is crucial since the nature of wet weather events is so unpredictable. The time element of “daily” has been removed to reflect the unpredictability of when and how often an operator must perform this essential type of maintenance at the project site.

*Comment:* 327 IAC 15-5-7(b)(17) is a duplication of air rules at 326 IAC 6. Fugitive dust rules which are enforceable by Office of Air Management should be referenced, otherwise the proposed language should be deleted. (RSI, NSWM, ICI)

*Response:* Fugitive dust may be mobilized via storm water discharges and all potential sources of storm water pollution are regulated by the storm water regulations. IDEM has referenced the fugitive dust rule and has added clarification to the Rule 5 language.

*Comment:* The posting of the required notice per 327 IAC 15-5-7 would be near the field office established for the project. The question is if the field office is a few miles from the project site, whether it is considered “near” the currently active construction site. (ICI)

*Response:* The intent of posting a notice is to provide information concerning the construction activity, including the location of the construction plans and project contacts. Therefore, the posting for the project should be close to the actual land-disturbing activity, so the notice can be referenced to the permitted site. Typically, this would be at the entrance to the project site. For linear projects (highway, utility), the notice should be posted within the confines of the project area.



*Comment:* They question the language in 327 IAC 15-5-7(b)(8) and seek clarification on the purpose of submitting an SWP3 plan for review and approval if it is not deemed the basis for implementation of a storm water quality measure. (WM, RSI, NSWMA)

*Response:* Field changes and additions would be mandated by the inspecting agency to address deficiencies and prevent storm water pollution. These mandated changes would only be made to bring the project in compliance with the standards set forth in this rule and the Indiana Storm Water Quality Manual.

#### **Pre-construction Meetings Requirement:**

*Comment:* In 327 IAC 15-5-7(b)(9) the rule is requiring a pre-construction meeting with the operator and all contractors visiting the site. IBA strongly disagrees with this government intrusion into the business practices of the on-site operator, as this would be time consuming and cause costly delays. They are opposed to the two-week delay, and the requirement for a written certification of the meeting in this subsection. They feel that there is already a sufficient form being used to notify contractors of their Rule 5 responsibilities, and the language with the additional requirements should be deleted from this subsection. (IBA, RSI, NSWMA, AEP, WM)

*Response:* Pre-construction meetings play an important role in the success of a construction project. It's purpose is to make sure everyone involved with the project understands what regulations are governing the project as well as what is expected by each contractor.

The language has been revised to require the project site owner to inform all primary individuals involved in construction activities at the site of the terms and conditions of Rule 5. The intent is to give each operator flexibility in how they decide to implement this requirement whether it be a pre-construction meeting with everyone that will be involved or via individual meetings with affected parties..

#### **Quality assurance Plan Procedures and Program:**

*Comment:* 327 IAC 15-5-6.5(b)(7)(G) requires quality assurance plan procedures. This raises questions on how the procedures will be enforced and whether quality assurance inspections would be required. (IBA)

*Response:* Compliance inspections and enforcement of Rule 5 will continue to be the responsibility of IDEM and IDNR in non-regulated MS4 areas. In regulated MS4 areas, the MS4 operator will perform compliance inspections and enforcement. The provision in 327 IAC 15-5-7(b)(18) has been revised to a "self monitoring program" and would be performed by a "trained individual" on behalf of the operator.

*Comment:* IBA has serious concerns with the quality assurance program in 327 IAC 15-5-7(19). A definition is needed for measurable rainfall. There are expense and other problems associated with weekend and weekly reporting of site conditions after a rain event. They feel that the requirements of this section are unnecessary, difficult to achieve, and difficult for IDEM to monitor. (IBA, ICI, WM, RSI, NSWMA)

*Response:* Effectiveness of storm water pollution prevention measures is heavily dependent on the frequent monitoring and maintenance of those measures. The weekly monitoring requirement is intended to ensure that appropriate pollution prevention measures have not been damaged and are in place for future rain events. The monitoring operation required after each rain event is necessary to identify cleanout and repair needs resulting from each storm. The required written reports do not have to be automatically submitted to IDEM. The requirement is to have the reports available within 48 hours, upon the request of the agency or their designated representative.

### **Surface Stabilization:**

*Comment:* IBA suggests a forty-five (45) day period before surface stabilization since surface stabilization after fifteen (15) days is too short for many construction projects. Weather and other uncontrollable delays affect surface stabilization, therefore a longer time-frame is needed. (IBA, ICI)

*Response:* The intent of the rule is to minimize adverse impacts to surface waters of the state during construction activities. With respect to soil erosion and sedimentation, this can best be accomplished by minimizing the exposure of bare soil to the erosive effects of precipitation and run-off. Temporary surface stabilization is considered most often as the least expensive and most efficient means to minimize this exposure. Temporary surface stabilization may take many forms, including anchored mulching, seeding and anchored mulching, covering, and the application of spray-on materials. The intent is to stabilize unvegetated and thinly vegetated areas that are expected to be left idle for a period of fifteen (15) or more days in the construction process. In these areas, it is expected that the appropriate stabilization method be applied upon completion of the most recent land disturbing activity in the unvegetated and thinly vegetated areas that are expected to be left idle, and not at the end of the fifteen (15) day requirement. Forty-five (45) days of inactivity with no stabilization would significantly increase the potential for erosion and the resulting sedimentation.

*Comment:* The provision in 327 IAC 15-5-7(b)(16) is impossible to meet as a blanket requirement in the continuous construction and operation of a solid waste land disposal facility. With 329 IAC 10-20-14(h) already in place, the fifteen (15) day seeding provision in the proposed rules is not appropriate. (RSI, NSWMA)

*Response:* 329 IAC 10 is currently being revised to address this concern.

### **Project Termination:**

*Comment:* In the event that the inspection of the site per 327 IAC 15-5-8-(d) is not done, the question is how the entity would know if their NOT letter was properly filed. They would also question how the NOT letter filing would be verified. (IBA)

*Response:* The intent of this requirement is to stress the importance of the Rule 5 permittee's obligation to submit an NOT letter once they have met the requirements in Section 8. It is important for the permittee to coordinate with the entity who has jurisdiction over their project to verify that the project is complete.

### **Inspection and Enforcement:**

*Comment:* In 327 IAC 15-5-10, WM seeks justification for additional measures beyond those already identified in the SWP3. The language is vague and allows the representative to be subjective. (WM, RSI, NSWMA)

*Response:* Field changes and additions would be recommended by the inspecting agency to address deficiencies and prevent storm water pollution. These recommended changes would only be made to bring the project in compliance with the standards set forth in this rule and the Indiana Storm Water Quality Manual.

### **Revisions that are required, and revisions that go beyond federal requirements:**

*Comment:* IBA is concerned about the rule going beyond the federal requirements. In 15-5-1, there is concern about the language referring to "completed project". They feel that once erosion control measures are in place, the owner/developer of the project should be relieved of their Rule 5 responsibilities. (IBA)

*Response:* The intent is to include within Rule 5 a method to address storm water pollutants that may be reduced via "post construction" best management practices. These practices must be planned for prior to initiation of land disturbing activities to ensure that they can be installed at a site. The intent is not to regulate the project after it is completed.

*Comment:* IBA requests IDEM to highlight the federal requirements in the draft rule as well as the changes IDEM feels are necessary for this rule. They would like to see the science or reasoning behind each of IDEM's decisions. IBA believes that if the current rule moves forward it will completely drain the agency of its resources of proper enforcement and severely cripple housing affordability in Indiana. (IBA)

*Response:* These rule changes are generally required to implement the federal Phase II program. The draft rules contain a few provisions that further clarify or elaborate on Indiana's Phase I storm water program language to address state concerns. Examples of these provisions

include additions to the definitions section, the addition of the land disturbance calculation section, expansion of the construction plan section, and the requirement to inform all contractors of the permit compliance terms and conditions. IDEM does not believe provisions in the rule, whether specifically in the federal requirements or not, will cripple housing affordability in Indiana.

*Comment:* WM fails to find how the proposed language “adds clarity and effectiveness” to the existing program. They would like to know the reasons IDEM seeks to exceed federal requirements. (WM)

*Response:* The proposed rule revisions and additions will improve clarity, remedy old Phase I omissions, utilize past program experiences, and incorporate new Phase II requirements.

### **Landfills:**

*Comment:* WM strongly believes that the proposed rule is a duplication of permit requirements for landfills regulated under 329 IAC 10. The proposed rule suggests that landfills do not have storm water pollution prevention plans and soil erosion measures, when in fact landfills are already required to have storm water pollution prevention plans and controls for soil erosion. They feel landfill operators may be placed in the middle of two branches of the same agency and receive conflicting directives. For example, 327 IAC 15-5-7(b)(16) regarding soil stabilization conflicts with 329 IAC 10 which addresses the same. In 327 IAC 15-5-4(14), they recommend excluding landfills from 327 IAC 15, and amending 327 IAC 10, if required, to add specificity regarding storm water management, rather than adopting a conflicting rule. (WM, RSI, NSWMA)

*Response:* 329 IAC 10 is currently being revised to address this concern.

### **General Comments:**

*Comment:* Regarding their comments from the first comment period, IBA was pleased that IDEM intends to continue the general permitting process. (IBA, IMA)

*Response:* The Phase II NPDES language contained in the federal register also strongly encourages the use of general permits for the storm water program. IDEM feels this is the best utilization of its resources.

*Comment:* The added language at 327 IAC 15-3-2, conflicts with the opening sentence of 327 IAC 15-5-6.

*Response:* IDEM has corrected this language in 327 IAC 15-5-6 to remove “327 IAC 15-3 and....”

*Comment:* The proposed rule is very specific, and requires timely review and oversight by various agencies. WM questions whether IDEM and other relevant agencies, with their current staffing levels, will be able to implement and oversee this new rule. (WM)

*Response:* All implementing agencies will do their best to effectively implement the revised federal program. IDEM is seeking statutory authorization for the Water Pollution Control Board to establish fees for the new MS4 and Phase II storm water programs.

*Comment:* The Indiana Storm Water Quality Manual should be placed on the DNR website and the web address should be shown in the rule. (ICI)

*Response:* The DNR, Division of Soil Conservation, is currently revising the Indiana Handbook for Erosion Control in Developing Areas. The revised version of this handbook will become the Indiana Stormwater Quality Manual. The revised version will include planning principles and practices that address post construction run-off associated with various land uses. This explanation is currently on the DNR, Division of Soil Conservation, website. The Division of Soil Conservation, at a minimum, plans to have an abbreviated version of the handbook and how to purchase the entire handbook on their website. Because they frequently change, IDEM feels that placing web addresses in the rule is not useful. The logistics of having the entire manual accessible via the web is being considered.

*Comment:* There is confusion over the substance of IDEM's presentation to the Water Pollution Control Board versus the published draft rule. The understanding from the board meeting presentation was that the rule would primarily impact municipal activities and minimally impact other activities. However, the proposed rule goes well beyond municipal activities. (RSI, NSWMA)

*Response:* As was explained in the presentation, the federally mandated Phase II NPDES storm water rule regulates storm water discharges associated with construction, industrial, and municipal activities.

#### **Cost benefit review:**

*Comment:* AEE questions whether the proposed rules have been subject to a cost benefit review. They feel that costs of regulation for small construction activity may outweigh the benefits, and that the costs would exceed estimates provided by U.S. EPA. (AEE)

*Response:* USEPA provided a cost-benefit analysis as part of the final Phase II storm water regulations. Provisions in draft Rule 5 that are Phase I omissions or were previously included in the federal language have already been accounted for at the federal level.

## **Rule 6 Comments**

### **Rule Applicability:**

*Comment:* In 327 IAC 15-6-5(7), justify the inclusion of “transfer stations” under this definition. Why was the potential designation of transfer stations moved from 327 IAC 15-6-2 (5)(H) to (5)(D)? The term “industrial waste” in this provision is contrary to Indiana Statute. (WM, RSI, NSWMA)

*Response:* In 327 IAC 15-6-2 (5)(D), IDEM has revised the designation category to include transfer stations. Transfer stations were added to provide more complete coverage of various solid waste handling and recycling facilities under Rule 6. Many of the same materials handled by facilities already subject to this rule are processed at transfer stations. Because they are solid waste processing facilities, IDEM staff felt that transfer stations would be more appropriately covered under subsection (5)(D), instead of placing them under transportation facilities in subsection (5)(H). IDEM’s Office of Land Quality staff provided input into this rule revision, and felt that Rule 6 coverage was needed at transfer stations. The potential for pollutants to impact water quality from transfer stations was deemed significant enough to require Rule 6 permit coverage and to initiate requirements for storm water pollution prevention measures. To clarify a difference, the term “process” was added to “industrial waste” in subsection (5)(D). “Industrial process waste” is meant to encompass wastes from all types of facilities subject to Rule 6.

### **Definitions:**

*Comment:* Amendments to 327 IAC 15-6-1 add a new definition of storm water discharge at 327 IAC 15-6-4(31) that appear to potentially make nonpoint sources subject to a NPDES General Permit. The NPDES permit process as codified in 33 USC, makes no reference to nonpoint source management programs. In the preamble to the initial federal NPDES rules at 55 FR 47995, U.S. EPA noted that the rulemaking covered only storm water discharges from point sources. AEE requests clarification on the state’s authority to include nonpoint sources, such as sheetflow run-off, in the NPDES general rule. (AEE)

*Response:* Rule 6, like the other storm water programs, regulates storm water discharges. Given the unpredictable nature of precipitation events, it is likely that there will be some form of point source discharge at a facility. Reference to sheetflow run-off has been removed from the definition, and the term “point source” has been reestablished in appropriate sections of the rule.

### **Qualified Professional:**

*Comment:* KI would like the criteria for a qualified environmental professional to include experience or training but not require both, stating that many personnel in the environmental field acquire sufficient knowledge through experience equal to that of a new graduate. (KI)

*Response:* IDEM agrees and has revised this definition to remove the educational degree requirement.

### **NOI Requirements:**

*Comment:* In former 327 IAC 15-6-5(7), writers request justification for exceeding federal requirements and requiring a map with a one (1)-mile radius. Federal regulations only require mapping of the site and drainage basins of site outfalls, and listing of only those wells and streams that are affected by storm water discharges. The proposed rules have additional requirements which will prove costly and time-consuming.(WM, RSI, NSWMA)

*Response:* In former 327 IAC 15-6-5(7), IDEM has revised the NOI letter requirements to remove an area map with a one-mile radius beyond the property boundaries of the facility. The area mapping requirements have been moved into 327 IAC 15-6-7(b). Under 327 IAC 15-6-7 (b)(1)(B)(iii) of the current rule, IDEM requires regulated facilities to currently provide a map, extending one-fourth of a mile beyond their property boundaries, that indicates springs, other surface water bodies, and drinking water wells. This information is useful to identify area storm water drainage patterns and potential impact areas for polluted storm water run-off from the facility. The one-mile radius extension has been removed, and the one-fourth of a mile radius is the revised rule requirement. Well location and area drainage system information is readily available from local municipal, county, or state offices. If this type of information is required under other regulations, the information simply needs to be duplicated for the Rule 6 NOI letter submittal. IDEM feels the use of existing data to meet multiple regulations is not overly burdensome to the permittee.

### **Proof of publication**

*Comment:* There is concern over the provision which adds a proof of publication submittal and public appeal process to Rule 6. (RSI)

*Response:* In 327 IAC 15-6-5(8), IDEM has required the submittal of a proof of publication to be consistent with other storm water general permit rules, and because this was a Phase I omission. The proof of publication requirement is intended to provide the general public with an opportunity to comment on the allowance of an industrial NPDES general storm water permit.

### **Storm Water Pollution Prevention Plan requirements:**

*Comment:* IMA is concerned that requiring risk assessment analysis seems to be going beyond the federal requirements and questions the need for it. (IMA, BSC, UTIL, AEP, RSI, NSWMA)

*Response:* Under 327 IAC 15-6-7 (b)(2)(A) and (D) of the current rule, IDEM requires regulated facilities to currently conduct a risk assessment. The revised rule language does not add a new requirement, but clarifies it. Risk assessment is necessary to identify industrial practices and areas that have the potential for exposure to storm water run-off, and, as a result of this assessment, to determine measures that can be implemented to reduce this potential exposure. The term “risk assessment” was changed to “risk identification”, to avoid confusion with recent other risk-based IDEM programs.

*Comment:* The required reporting of historical spill information beyond the most recent three (3)-year period exceeds the federal requirements, and it is not clear as to the value of such requirements. (WM, RSI, NSWMA)

*Response:* IDEM feels that the three (3)-year requirement is not adequate to address potential pollutant source locations from spills. Spills that are greater than three years old may still contribute pollutants to storm water run-off. The historical requirement was changed to spills occurring three (3) years prior to the NOI letter submittal date, and five (5) years from the NOI letter date in subsequent permit terms.

*Comment:* There is concern within the new general requirements of a storm water pollution prevention plan at former 327 IAC 15-6-7(b)(2) and 327 IAC 15-6-7(b)(3). The required soils map and aerial photograph exceed the federal requirements and it is not clear as to the value of such requirements. (AEP, WM, RSI, NSWMA)

*Response:* Under 327 IAC 15-6-7 (b)(1)(i)(JJ) of the current rule, IDEM requires regulated facilities to currently provide a site map indicating soil types in the storm water pollution prevention plan. The revised rule language does not add a soils map requirement, but clarifies it. The revised rule language no longer adds a requirement for aerial photography. Aerial photography could provide a graphic overview of the facility, so that industrial activity areas can easily be identified and assessed for pollutant potential through visual means. Although not required, the photograph is a useful tool for implementation of a storm water pollution prevention plan, and is widely available through local sources such as the US Geological Survey, regional planning commissions, and county Soil and Water Conservation Districts.

*Comment:* The requirement in 327 IAC 15-6-7(a)(4) to specifically identify individual members of the storm water pollution prevention team is unnecessary and burdensome to update and keep current with personnel changes. They suggest using position titles instead of names. (WM, RSI, NSWMA)

*Response:* IDEM agrees and has revised this language to reference position titles for member or members of the storm water pollution prevention team.



*Comment:* The provision in 327 IAC 15-6-7(d)(1) seems to duplicate the Storm Water Pollution Prevention Plan. In addition, a SPCC plan is required which is duplicative and should be deleted. (RSI, NSWMA)

*Response:* In 327 IAC 15-6-7 (c)(1), the requirements are part of the overall facility storm water pollution prevention plan. As a result of a submitted comment, the content of subsections (c) and (d) were switched for clarity. As it pertains to 327 IAC 15-6-7 (c)(2) and is written in 327 IAC 15-6-7(d)(6), any information that has been developed to comply with another regulation, such as Spill Prevention Control and Countermeasures (SPCC) requirements, can be referenced, and not duplicated, in the storm water pollution prevention plan. However, if the exact information required by this subsection is not addressed in another required document, it must be presented in the storm water pollution prevention plan. Because the potential exists for the items listed in subsection (c)(2) to not be addressed elsewhere by a facility, the language will remain in the rule.

### **Monitoring requirements:**

*Comment:* The test requirements for E.coli bacteria should be *in lieu* of a written non-storm water assessment program. Many plants are located in rural areas where there is run-off from adjacent properties that have animal wastes containing E.coli bacteria. The question raised is whether the entities would have to test upstream waters each sampling event to prove that E.coli bacteria is from other sources. The concern is the increased expense that would result. (KI)

*Response:* The interpretation of sampling data is done on a case by case basis for each facility. All sources of potential pollution should be documented in the Storm Water Pollution Prevention Plan, including those potentially contributed from external sources. The written non-storm water assessment must include a certification letter stating that storm water discharges from the facility property have been evaluated for the presence of illicit discharges and non-storm water contributions. This certification would be performed once during each five (5) year permit cycle and, if suitable to a facility, an E.coli bacteria sample could be collected and analyzed to analytically verify that no sewage is present. The rule language was changed to remove the requirement for E.coli bacteria sampling. To verify that a bacteria source is upstream of a facility, the collection of an upstream sample would be recommended during the sample collection of the facility's discharge(s).

*Comment:* At 327 IAC 15-6-7.3, it is unclear whether the new monitoring parameter of E.coli applies to industrial facilities. AEP would like to see an explanation of the need, as well as supporting justification, for this parameter. (AEP)

*Response:* The testing for E.coli bacteria is no longer required for Rule 6 permittees. This requirement was originally added due to the significant potential for illicit discharges to contaminate storm water run-off, and to numerically determine if sewage is present. If a facility

determines its suitability, E.coli bacteria can still be tested as a means of verification of no illicit sanitary connections, but bacteria testing is not required.

*Comment:* Under 327 IAC 15-6-7.3(a)(12) monitoring requirements, it is stated that run-off events resulting from snow and ice melt should not be sampled and may not be used to meet the minimum annual monitoring requirements. U.S. EPA has allowed the sampling of snow and ice melt in the storm water program. Therefore, facilities should have the option to obtain samples from snow and ice melt. Moreover, large corporations with multiple regulated facilities may not have sufficient time, staff, and equipment to collect samples at all their facility locations without sampling during winter months. The expense related to renting equipment is not feasible due to the current economic conditions. (KI)

*Response:* The intent of this requirement is to develop standards for uniformity with regard to data collection procedures. USEPA's NPDES Storm Water Sampling Guidance Document, EPA # 833-B-92-001, July 1992, states that "snow melt may be sampled as long as the applicant works closely with the permitting authority to determine the proper sampling strategy". IDEM, as the permitting authority, feels that sampling snow and ice melt discharges does not meet the required qualified storm event sampling conditions, and tend to provide inconsistent data.

*Comment:* In 327 IAC 6-7.3(a)(1) they question IDEM's rationale for exceeding federal requirements, and adding E.coli, total copper, total zinc, and total lead to the listing of required sampling parameters. (RSI, NSWMA)

*Response:* In 327 IAC 15-6-7.3, IDEM initially added E.coli bacteria, total copper, total zinc, total lead, and any other pollutant, which is reasonably expected to be present in the discharge. The additional parameters were added to gather concentration data on pollutants that have not been previously addressed and have been historically identified as present in storm water run-off from industrial facilities. However, because the parameters are not present at all categories of regulated facilities, IDEM concurs that language requiring the sampling and analysis for E.coli bacteria, total copper, total zinc, and total lead should be removed from the rule.

*Comment:* In 327 IAC 15-6-7.3(b)(4) the phrase "as soon as they are completed" is vague and needs to be defined. They suggest several time frames for data submittal, including annual or "within thirty (30) days after lab analysis has been completed." (KI, RSI, NSWMA)

*Response:* IDEM concurs with the suggestion to change the "as soon as they are completed" reference in 327 IAC 15-6-7.3 (b)(4) to "within thirty (30) days after laboratory analyses have been completed."

*Comment:* The rule calls for analysis of carbonaceous biochemical oxygen demand (CBOD) as well as chemical oxygen demand (COD). The current rule had reportedly been

amended to replace BOD with CBOD, and to eliminate COD. COD needs to be removed from the list of required sampling. (KI)

*Response:* Currently both 327 IAC 15-6-7(d)(1) and 40 CFR 122.26(c)(E)(3) list COD as a required storm water monitoring parameter. The listing of COD as a parameter has not changed since the rule (327 IAC 15-6) was first published in 1992. COD is a measure of oxygen depletion caused by chemicals, and is different from CBOD<sub>5</sub> or BOD<sub>5</sub>, which are measures for depletion by biological sources. Therefore, COD is a better indicator of industrial source discharges, which typically contain chemical components. For the CBOD<sub>5</sub> parameter, CBOD<sub>5</sub> is preferred instead of BOD<sub>5</sub> because the nitrogenous component of BOD<sub>5</sub> is already being addressed by the required ammonia-nitrogen and nitrate-nitrite parameters.

*Comment:* It needs to be clarified whether the oil and grease test required under the monitoring requirement section is to be performed by the Freon extraction method or by the EPA-mandated Hexane extraction method. (KI)

*Response:* Per 327 IAC 15-6-7.3(a)(11) sampling methods used must meet the requirements of 327 IAC 5-2-13(d)(1), which references approved methods in 40 CFR 136. Currently both the Freon and Hexane extraction methods are listed as approved methods for oil and grease testing and therefore either may be used. However, it should be noted that during calendar year 2002 USEPA is scheduled to revise part 136 to remove the testing procedures that utilize Freon. Therefore, IDEM recommends the use of USEPA Hexane extraction method 1664.

*Comment:* Under current Rule 6 language, certain outfalls have been permitted in individual NPDES permits by reference to the general NPDES permit program and its sampling requirements. The question is how will the changes to Rule 6 affect the facilities who have a set of sampling requirements in their existing permits. The language in 327 IAC 15-6-1 “composed entirely” of storm water will impact previously issued individual permits, and this needs to be addressed. (KI)

*Response:* The “composed entirely” of storm water language and the clarification found in 327 IAC 15-6-2(a)(4) that includes allowable non-storm water discharges were Phase I omissions, and were added to the rule language to be consistent with federal requirements. Permittees with individual NPDES permits are governed by the permit conditions, and there is the allowance under those permits to have commingled wastewater and storm water discharges. Permittees with existing individual NPDES permits that reference Rule 6 requirements will either have to comply with existing or revised Rule 6 requirements, depending on the reference language in the individual permit and the permit’s effective date.

#### **Duration of Coverage and Renewal:**

*Comment:* Upon permit renewal in 2006, will IDEM issue a generator certification document to certify the original NOI letter is still valid and information is current? The rule

states that the NOI information package would have to be resubmitted even if there are no changes. This would not be cost-effective. The recommendation is to have a short-form for the purposes of renewal when no changes have occurred. (KI)

*Response:* IDEM is currently developing state forms to use for all required compliance submittals. The new NOI letter forms will be simpler to use. It is standard practice in the NPDES permit program to require resubmittal of such an application for permit renewals. The resubmittal is particularly needed for Rule 6 NOI letter forms, due to changes in NOI package submittal requirements.

**Required revisions and revisions that go beyond federal requirements:**

*Comment:* They request that a full accounting of the provisions in the proposed rule which are beyond the federal requirement along with the justification for each of them be presented to the Water Pollution Control Board. (IMA, UTIL)

*Response:* This comparison and justification will be provided to the Board.

*Comment:* IDEM needs to re-issue the second notice identifying the revisions being made that are required to implement the Phase II rule, and the revisions IDEM is proposing which go beyond the federal requirements. (BSC)

*Response:* Due to lengthy state rulemaking procedures and the limiting federal time frame for required state rule adoption, IDEM will not be re-opening the Second Public Comment Period. IDEM is making every effort to be responsive to comments concerning the rules, and has invited all commenters and known relevant associations to participate in question and answer public meeting sessions concerning the two rules. Public comments will be allowed during preliminary adoption, third comment period, if applicable, and final adoption public hearings before the Water Pollution Control Board.